

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAIL BOXES ETC., INC., et al.,

CASE NO. 10cv2112 DMS (BGS)

Plaintiffs,

vs.

MJK OF ITHACA INC., et al.,

**ORDER DENYING PLAINTIFFS'
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

Defendants.

[Docket No. 9]

This matter comes before the Court on Plaintiffs' *ex parte* application for a temporary restraining order ("TRO") against one of its former franchisees. Defendants MJK of Ithaca, Inc., David Lamoureux and Joanne Lamoureux oppose the application.

I.

DISCUSSION

The purpose of a temporary restraining order is to preserve the status quo before a preliminary injunction hearing may be held; its provisional remedial nature is designed merely to prevent irreparable loss of rights prior to judgment. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974) (noting that a temporary restraining order is restricted to its "underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.") The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *Lockheed Missile & Space Co., Inc. v.*

1 *Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). A party seeking injunctive relief under
 2 Federal Rule of Civil Procedure 65 must show “that he is likely to succeed on the merits, that he is likely
 3 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
 4 favor, and that an injunction is in the public interest.” *Am. Trucking Ass’ns v. City of Los Angeles*, 559
 5 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def. Council, Inc.*, ____ U.S. ___, 129
 6 S.Ct. 365, 374 (2008)).

7 Here, Plaintiffs argue they have shown a likelihood of success on the merits of their trademark
 8 infringement claim. In support of this argument, Plaintiffs cite Defendants’ “continued, unauthorized
 9 use” of Plaintiffs’ marks. (Mem. of P. & A. in Supp. of *Ex Parte* App. at 12.) However, Defendants
 10 assert the cited uses of the marks were isolated, inadvertent events, and that they “have taken all steps
 11 to ensure that such an incident will never happen again.” (Opp’n to *Ex Parte* App. at 8.) Defendants
 12 also explain the efforts they have taken to de-identify their store as a The UPS Store. Under these
 13 circumstances, Plaintiffs have not shown a likelihood of success on their trademark infringement claim,
 14 nor have they shown they are likely to suffer irreparable harm in the absence of a temporary restraining
 15 order. Furthermore, Plaintiffs have not shown that the balance of equities weighs in their favor, or that
 16 an injunction would serve the public interest in this case. In the absence of such a showing, Plaintiffs
 17 are not entitled to a temporary restraining order.

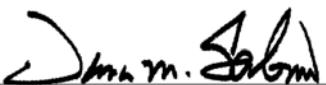
18 **II.**

19 **CONCLUSION**

20 For these reasons, Plaintiffs’ *ex parte* application for temporary restraining order is denied.

21 **IT IS SO ORDERED.**

22 DATED: November 15, 2010

23 
 24 HON. DANA M. SABRAW
 25 United States District Judge
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